REMARKS

Claims 1-10, 12-13, 15-24, 26-27, 29-39, 41-42, 44-54, 56-57, and 59-64 are pending in this application. No amendments to the claims are made by this Response. Reconsideration of the claims in view of the following remarks is respectfully requested.

I. Rejection under 35 U.S.C. § 103(a) based on Hershey and Chandra

The Final Office Action rejects claims 1, 3-7, 9, 12, 16, 17, 19-21, 23, 26, 29, 30, 32-36, 38, 41, 45, 47-51, 53, and 56 under 35 U.S.C. § 103(a) as being allegedly unpatentable over Hershey et al. (U.S. Patent No. 5,793,753) in view of Chandra et al. (U.S. Patent No. 6,397,359). This rejection is respectfully traversed.

Claim 1, which is representative of the other rejected independent claims 30 and 45 with regard to similarly recited subject matter, reads as follows:

> 1. A method for communicating performance information, said method comprising:
>
> configuring a plurality of probes to execute a script for performing a transaction between a client computing device and a server computing device, wherein the script comprises a plurality of transaction steps for performing the transaction;
>
> collecting data from the plurality of probes, including at least one local probe and at least one remote probe, wherein the collected data is data representative of a performance of the transaction steps of the script executed by the plurality of probes; and
>
> reporting said data, wherein reporting said data comprises generating a report that comprises a plurality of transaction step entries, one entry for each transaction step of the script, having associated performance data collected from one or more of the at least one local probe or the at least one remote probe. (emphasis added)

Neither Hershey nor Chandra, either alone or in combination, teach or suggest the features of claim 1 emphasized above. The Hershey reference has been addressed previously in the Response filed December 19, 2005, the remarks of which are hereby incorporated by reference. As stated in the December 19, 2005 Response, Hershey does not teach or suggest programming a probe with a script for performing a transaction

between a client device and a server device, wherein the script includes a plurality of transaction steps. Hershey also does not teach or suggest reporting collected data, which is representative of the performance of the transaction steps, by generating a report that comprises a plurality of transaction step entries, one entry for each transaction step of the script, having associated performance data. The Final Office Action admits that Hershey does not teach these features (see Final Office Action, page 3, paragraph 9). However, the Final Office Action alleges that these features are taught by Chandra. Applicants respectfully disagree.

Chandra is directed to a mechanism for scheduled measurement of connections between end nodes. The end nodes are provided with test protocols that have test scripts. These test scripts are used to measure the performance of the connection between the end nodes without requiring any involvement of application software which may or may not be present on the end nodes (column 3, lines 16-50). The system of Chandra may make measurements of the connection performance at scheduled times and may store this information until a request for a report is received, or an automatic scheduled report is performed. The reports are provided to a console node which generates statistics for the connection based on the measured performance.

Chandra is not concerned with measuring the performance of transactional steps of a script but rather merely the performance of the connection as a whole. Thus, Chandra does not teach or even suggest to measure the performance of individual transactional steps of a script and provide a report having entries for each of the individual transactional steps.

The only mention of "transactions" in Chandra is in the Background of the Invention section where Chandra discusses a known system management tool (see column 1, lines 54-66). As discussed in this Background section of Chandra, one known system management tool involves actively emulating application transactions. Agents at the end user locations monitor actual sample application transactions to measure performance of the application operating over the network environment. While Chandra teaches that such system management tools exist, Chandra takes an opposite approach by concerning itself with only the measurements of the connections between end nodes without requiring any involvement of application software which may or may not be

present on the end nodes (see column 3, lines 20-23, "...without requiring any involvement of application software...", and column 3, lines 39-41, "...without regard to the end user application programs available at particular endpoints..."). While the Background in Chandra mentions using synthetic transactions to monitor performance of applications, the monitoring is done on a transaction level. There is no mention in Chandra of monitoring the performance of individual steps in the transactions or providing a report having entries for each transaction step of a transaction in a script.

Moreover, other than the above mentioned portion of the Background section in Chandra, the only other mention of transactions in Chandra is that the performance measure may include transaction rates. Thus, yet again, the performance measure is at a transaction level rather than at a level corresponding to individual transaction steps of a transaction. Hence, even if Chandra does perform measurements of connection performance with regard to transactions, the measurements are not done with regard to individual transaction steps such that a report having entries for each transaction step of a transaction in a script is provided. Thus, contrary to the allegations raised by the Final Office Action, Chandra actually does not teach or even suggest to measure performance of transactional steps but instead to only measure the performance of a connection between end nodes, which at most may be performed on a transaction basis, not individual transaction steps.

The Final Office Action alleges that Chandra teaches the collection of data for reporting at column 8, lines 22-35, column 13, lines 10-11, column 16, line 20 to column 18, line 35, and column 3, lines 45-47. Column 8, lines 22-35 of Chandra teaches that the endpoint node pairs generate timing records and calculate performance test results from these timing records and provide these performance test results to a console node. The console node may then analyze the performance test results. Column 13, lines 10-11 of Chandra teaches that the results may be stored until an appropriate time for a batch or event driven reporting of results to the control node.

Column 16, line 20 to column 18, line 35 provides a number of tables describing connection analysis results and periodic report results. It is important to note that nowhere in these tables is there anything regarding providing a report that has entries for each transaction step of a transaction in a script. To the contrary, the only mention of

transactions in these tables is the transaction count which is a count of a number of transactions. There are no entries in any of the "results" tables of Chandra regarding individual transaction steps of a transaction in a script.

Column 3, lines 45-47 of Chandra teaches that network test results may encompass an end-to-end view and may further break network performance analysis down into its components, such as client, server, application, and network time, to potentially quickly and accurately isolate problems. While this section talks about breaking down results into various parts of the network, i.e. client, server, application, etc., there is no teaching or even suggestion in this portion of Chandra regarding providing a report having entries for each of the transaction steps of a transaction in a script.

Thus, neither Hershey nor Chandra, either alone or in combination, teach or suggest that collected data is data representative of a performance of transaction steps of a transaction in a script executed by a plurality of probes. Moreover, neither Hershey nor Chandra, either alone or in combination, teach or suggest reporting the data, wherein by generating a report that comprises a plurality of transaction step entries, one entry for each transaction step of the script, having associated performance data collected from one or more of at least one local probe or at least one remote probe. Therefore, even if Hershey were combinable with Chandra, and one were somehow motivated to attempt such a combination, *arguendo*, the result of the combination still would not result in these features of independent claims 1, 30 and 45 being taught or suggested. At least by virtue of their dependency on claims 1, 30, and 45, respectively, neither Hershey nor Chandra, either alone or in combination, teach or suggest the features of dependent claims 3-7, 9, 12, 16, 17, 19-21, 23, 26, 29, 32-36, 38, 41, 47-51, 53, and 56. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 1, 3-7, 9, 12, 16, 17, 19-21, 23, 26, 29, 30, 32-36, 38, 41, 45, 47-51, 53, and 56 under 35 U.S.C. § 103(a).

II. Rejection under 35 U.S.C. § 103(a) based on Hershey, Chandra and Schwaller

The Final Office Action rejects claims 2, 8, 10, 13, 15, 18, 22, 24, 27, 31, 37, 39, 42, 44, 46, 52, 54, 57, and 59 under 35 U.S.C. § 103(a) as being allegedly unpatentable over Hershey and Chandra, and further in view of Schwaller et al. (U.S. Patent No. 6,901,442). This rejection is respectfully traversed.

Claims 2, 8, 10, 13, 15, 18, 22, 24, 27, 31, 37, 39, 42, 44, 46, 52, 54, 57, and 59 are dependent claims that are dependent upon respective ones of independent claims 1, 30 and 45. Thus, at least by virtue of their dependency, these claims are not taught or suggested by the alleged combination of Hershey and Chandra for the reasons set forth above in section I. Moreover, Schwaller does not provide for the deficiencies noted above with regard to Hershey and Chandra.

Schwaller is directed to a mechanism for filtering of network performance data. Nowhere in Schwaller is there any teaching or suggestion to program a probe with a script that comprises a plurality of transaction steps for performing a transaction between a client device and a server device. Schwaller merely states that the data may be collected in response to active testing of the network or passive data collection (column 7, lines 55-65). Schwaller does not provide any teaching or even suggestion regarding a script such as that recited in independent claims 1, 30, and 45.

Furthermore, Schwaller does not teach or suggest a report such as that recited in claims 1, 30, and 45. Schwaller does show various outputs in Figures 9A-13. However, in none of these outputs is there any report such as that recited in claims 1, 30, and 45. That is, none of the outputs of Schwaller show a report that comprises a plurality of transaction step entries, one entry for each transaction step of a script, having associated performance data collected from one or more of the at least one local probe or the at least one remote probe. To the contrary, the outputs generated by Schwaller may provide performance data for a plurality of applications (see Figure 9A of Schwaller), but there is no indication of any transaction steps of a script that is used to program a probe in any of the outputs of Schwaller.

In fact, there is no ability in Schwaller to match any of the data output by Schwaller to transaction steps of a script used to program a probe. Schwaller does provide an output of a distribution of response times for transactions (see Figure 10.C.1), however, there is no indication of the individual transaction steps for the transactions or the corresponding performance data for such transaction steps in any of the outputs provided by Schwaller, similar to Chandra discussed above. Thus, Schwaller, like Hershey and Chandra, does not teach or suggest the features of independent claims 1, 30, and 45. Since none of these references teach or suggest these features, any alleged combination of the references, even if such a combination were possible and one of ordinary skill in the art were somehow motivated to make such a combination, would not result in these features being taught or suggested.

In view of the above, Applicants respectfully submit that neither Hershey, Chandra, nor Schwaller, either alone or in combination, teach or suggest the features of independent claims 1, 30, and 45. At least by virtue of their dependency on claims 1, 30, and 45, respectively, neither Hershey, Chandra, nor Schwaller, either alone or in combination, teach or suggest the features of dependent claims 2, 8, 10, 13, 15, 18, 22, 24, 27, 31, 37, 39, 42, 44, 46, 52, 54, 57, and 59. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 2, 8, 10, 13, 15, 18, 22, 24, 27, 31, 37, 39, 42, 44, 46, 52, 54, 57, and 59 under 35 U.S.C. § 103(a).

III. Rejection under 35 U.S.C. § 103(a) based on Hershey, Chandra, Schwaller, and Wlashin

The Final Office Action rejects claims 60-64 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Hershey, Chandra, Schwaller, and further in view of Wlashin et al. (U.S. Patent no. 6,163,775). This rejection is respectfully traversed.

Claims 60-64 are dependent from respective ones of independent claims 1, 30, and 45. The deficiencies of Hershey, Chandra, and Schwaller with regard to claims 1, 30, and 45 have been discussed above. Wlashin does not provide for these deficiencies. Wlashin is cited as allegedly teaching using tables to report data. Wlashin does not teach or suggest reports that have entries for a plurality of transaction steps of a transaction in a

script that is provided to local and/or remote probes, as recited in claims 1, 30, and 45. Thus, even if Wlashin were combinable with the other references, the addition of Wlashin would not result in the features of the independent claims discussed above being taught or suggested.

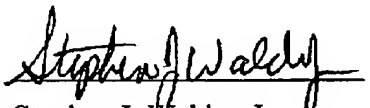
In view of the above, Applicants respectfully submit that neither Hershey, Chandra, Schwaller, nor Wlashin, either alone or in combination, teach or suggest the features of independent claims 1, 30 and 45. At least by virtue of their dependency on claims 1, 30, and 45, the alleged combination of references does not teach or suggest the features of dependent claims 60-64. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 60-64 under 35 U.S.C. § 103(a).

IV. Conclusion

It is respectfully urged that the subject application is in condition for allowance. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

Respectfully submitted,

DATE: May 15, 2006



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